

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of RP and JP, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JUDY PAVLIK,

Respondent-Appellant,

and

RICHARD A. PAVLIK,

Respondent.

In the Matter of RP and JP, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

RICHARD A. PAVLIK,

Respondent-Appellant,

and

JUDY PAVLIK,

Respondent.

UNPUBLISHED
December 5, 2000

No. 221891
Ogemaw Circuit Court
Family Division
LC No. 97-010712-NA

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Before: Wilder, P.J., and Smolenski and Whitbeck, JJ.

PER CURIAM.

Respondents Judy Pavlik and Richard A. Pavlik, Jr. appeal as of right from the family court's order terminating their parental rights to their minor children under MCL 712A.19b(3)(b)(ii), (c)(i), and (g); MSA 27.3178(598.19b)(3)(b)(ii), (c)(i), and (g). We affirm.

I. Basic Facts And Procedural History

Respondents' minor son and daughter were removed from the home in 1997 after both parents were arrested for mutual domestic abuse. Both were intoxicated when arrested. The parents pleaded no contest to the petition in exchange for the dismissal of the domestic abuse charges. They were granted unsupervised daytime visits, with overnight visits expected after they were sober for ninety days. After their daughter reported that her mother slapped her face, the visits were supervised for three weeks but then resumed without supervision.

Alcohol and domestic violence were the two problems recognized initially by the Family Independence Agency (FIA). An FIA caseworker testified that the agency had been assisting the parents to resolve both problems since 1992 and did not believe either parent would change. For instance, between 1992 and 1997, the father had been arrested several times for domestic violence and the mother had sought shelter twice, leaving her son with his father. The mother also was charged with delivering marijuana and was later arrested for shoplifting liquor.

Statements the children made after they were removed from the home led the FIA to bring a new allegation against the parents. Both children reported that Ernie Harrington, a friend of the mother's, had sexually abused them. The daughter reported that her mother took them to Harrington's house and that he had also abused them in their home, while their mother was in the house. The FIA had apparently told the parents that Harrington had sexually abused his own daughter. Evidently, Harrington might be the biological father of the respondent's daughter. When Judy Pavlik sought shelter for domestic violence in 1992, she said that she had just told her husband that she was pregnant with Harrington's child. The family court found insufficient evidence to halt the unsupervised visits, but warned the parents to prohibit Harrington from having any contact with the children during the visits.

During the spring of 1997, the mother failed a breathalyzer test, was reportedly spotted carrying beer, and was arrested in May for drunk driving. The family court ordered that the visits again be supervised for several weeks and required the parents to pass breathalyzer tests before each visit. During that summer, the mother attended counseling and passed breathalyzer and urine tests, although her alcohol abuse counselor believed that she had not made any real progress addressing her problems. The father continuously missed alcohol and domestic violence counseling sessions and was eventually dropped from both programs.

In November 1998, the family court held a permanency planning hearing, at which a caseworker recommended terminating both parents' parental rights. Although the mother was complying with her counseling and alcohol testing plan, the caseworker said that there was no

guarantee that the father would stay away from the home during visits. It was unclear whether he was living at the home with the mother at that time. In addition, the daughter now alleged that her mother held her down so Harrington could abuse her. The family court initially found insufficient evidence of this new allegation against the mother and tentatively decided that because the mother had complied with the treatment plan the children should return to her. However, later that day, the family court heard additional testimony that the mother was home during the abuse, that the FIA had warned her about Harrington, and that she had ignored her son's attempts to demonstrate the abuse with his toys. The family court found probable cause to believe that the mother participated in the abuse and ordered the children to stay in foster care pending an evidentiary hearing.

The children's therapist testified that the mother had to acknowledge to her children that the abuse actually occurred, in order to reassure them that she would believe them in the future and would protect them from further abuse. The family court eventually granted overnight and weekend visits with the mother, who obtained a personal protection order against Harrington.

Unfortunately, the family's problems continued. The father was present during several of the children's visits home. The children were instructed to lie about this, and the father hid during surprise checks by the FIA. At an April 1999 hearing, the mother admitted that the father was home all weekend during one visit and that he drank alcohol after the children went to bed. The children claimed that the drinking began while they were present. The father's contact with the children ceased only when he was arrested for drunk driving and attempted larceny, was sentenced to ninety days in jail and, as a condition of probation, received ninety days in-patient therapy for alcohol abuse. In June 1999, the mother was arrested for drunk driving.

On June 30, 1999, the family court held a hearing to decide whether to terminate respondents' parental rights. The mother's therapist testified that she had made little progress in ending her denial and acknowledging her failure to protect her children, and that she continued to lie, even denying the father's arrest for drunk driving. The children's therapist testified that the children's greatest problem was their mother's denial of their abuse and her failure to protect them, and their father's own failure to prevent the abuse. The children were reportedly ambivalent about returning home and lacked a trusting relationship with either parent. The father blamed his failure to attend counseling and court hearings on his work, which required him to travel to job sites throughout the state. He claimed that after the incarceration and in-patient therapy he was past the difficult withdrawal stage and would remain free of alcohol.

The family court terminated both parents' parental rights on three grounds. First, the child suffered sexual abuse and "[a] parent who had the opportunity to prevent the . . . sexual abuse failed to do so and the court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent's home."¹ Second, "[t]he conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the age of the child."²

¹ MCL 712A.19b(3)(b)(ii); MSA 27.3178(598.19b)(3)(b)(ii).

² MCL 712A.19b(3)(c)(i); MSA 27.3178(598.19b)(3)(c)(i).

Third, “[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody with a reasonable time considering the age of the child.”³

In its opinion, the family court focused on the lack of improvement in either parent. After two years, the father said he was finally ready to work on his alcohol problems to avoid further jail time, which apparently was a greater motivation than the loss of his children. The family court said that, by blaming his jobs for his failure to attend the meetings, the father revealed that he values his jobs more than programs intended to help him end his alcohol abuse and domestic violence. Regarding Harrington, the family court noted that the father said he recognized the danger and yet he did nothing about it. The mother repeatedly exposed her children to that danger. She too had not improved in the previous two years, the family court found. For children, the family court said, time is of the essence and for these children enough time had passed.

II. Standard of Review

A family court may terminate parental rights if there is clear and convincing evidence of statutory grounds for termination.⁴ This Court reviews the family court’s finding for clear error.⁵

III. Grounds for Termination

The family court’s first ground for termination was sexual abuse, the parents’ failure to prevent the abuse, and the likelihood that the children will be abused again.⁶ According to testimony by a foster care worker and several others in contact with the children, both children alleged that Harrington sexually abused them numerous times, often while their mother was in the home. The eleven-year-old son also testified to the abuse. Further, the evidence indicates that both parents knew that Harrington had been accused of molesting another child and yet took no action to protect their own children. Yet, according to the children, their mother brought them in contact with Harrington and left them alone with him. Their father apparently opposed these visits but took no action to prevent them or to determine whether his children had been abused. Although the father argues that he did not know about the abuse, the evidence contradicts his claim. The petitioner therefore presented sufficient evidence that both parents had the opportunity to prevent the sexual abuse, by keeping their children away from Harrington, and yet failed to do so.

There was also evidence of a reasonable likelihood that the abuse would continue, contrary to the mother’s argument on appeal. Although the mother obtained a personal protection order against Harrington, whom she had a friendship with for several years, her

³ MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g).

⁴ MCR 5.974(F)(3).

⁵ MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

⁶ MCL 712A.19b(3)(b)(ii); MSA 27.3178(598.19b)(3)(b)(ii).

therapist testified that she continued to deny that her children were abused and that she failed to protect them. It was reasonable to believe that she might place them in danger again in the future. The children's therapist also testified that the children did not trust their mother to believe them if they reported abuse to her in the future. Therefore, if the children lived with their mother and believed they were again in danger they might remain silent. The therapist said that the children also lacked a trusting relationship with their father. Because the father failed to keep Harrington away from his children in the past, denying his knowledge of the danger Harrington posed to his children, it is reasonable to believe that he would not protect his children from abuse in the future.

The second ground for termination stems from the parents' failure to solve their alcohol and domestic violence problems, the conditions that first led to this adjudication.⁷ Witnesses testified to seeing both parents with alcohol during the time between the removal of the children and the order to terminate parental rights. Most significantly, however, in 1999, 1½ years after the children were first removed from the home, both parents were arrested for drunk driving in separate incidents. Therefore, at least one of these conditions, the alcohol abuse, still existed shortly before the family court terminated their parental rights. The father also substantially failed to attend required counseling sessions for alcohol abuse and domestic violence. He did not make the effort necessary to rectify the conditions that led to the removal of his children from the home. The mother attended her counseling sessions, but her counselor believed she also was not making any real progress and the mother's arrest for drunk driving supported that belief. All the evidence on the record suggested that there was no reason to believe that either parent would stop abusing alcohol within a reasonable time considering the children's ages when they had not done so after years of counseling and group therapy.

Finally, the third ground for termination was the parents' failure to provide proper care or custody, regardless of their intent.⁸ Although the parents have a house and are apparently employed, they were unable or unwilling to stop abusing alcohol. This is an important factor because the parents could not care for their children when they were under the influence of alcohol. According to the son, his father drank vodka all weekend during the children's visit at home. Witnesses testified that, according to the son, his mother told him to lie about his father being present during those visits. Further, the evidence revealed that both parents failed to protect their children from abuse and therefore failed to care for them. Based on the evidence presented, it was reasonable to believe that neither parent would be able to provide proper care within a reasonable time, considering the children's ages, because neither parent was able to stop abusing alcohol or acknowledge the abuse, despite counseling.

The family court therefore did not clearly err in finding that the statutory grounds to terminate respondents' parental rights were established by clear and convincing evidence.

⁷ MCL 712A.19b(3)(c)(i); MSA 27.3178(598.19b)(3)(c)(i).

⁸ MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g).

IV. Due Process Claim

The father also claims that the FIA unreasonably limited his contact with his children and failed to provide him with services required by statute, in violation of due process. He argues that, under MCL 712A.18f(1)(b); MSA 27.3178(598.18f)(1)(b), the FIA should have been required to show why it did not provide him with services to prevent the children from being removed from the home. It is true that the FIA must either provide services to a parent facing termination of his parental rights or justify its decision not to provide services.⁹ However, according to FIA caseworkers, the agency did provide counseling sessions, which he usually failed to attend. He argues that his failure to attend these sessions was because his limited education and job skills required him to accept work at various locations throughout the state. Had he attended the classes, he said, he would have lost his job. However, a caseworker testified at the termination hearing that the agency made several attempts to assist him in setting up counseling appointments. Another caseworker testified at a previous hearing that he was seldom in contact with the father because the father did not respond to his contact attempts.

The father argues that the FIA should have “made allowances” for his work situation, but fails to explain what sort of accommodations would have allowed him to attend counseling sessions. The agency did provide services, but he simply failed to take advantage of them. Therefore, his claim is without merit.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Michael R. Smolenski
/s/ William C. Whitbeck

⁹ *In re Terry*, 240 Mich App 14, 25, n 4; 610 NW2d 563 (2000).